

Fairfield City Wide Development Control Plan

APPENDIX D

**TREE PRESERVATION
ORDER**

1 Statutory/Non Statutory Provisions

1.1 Legal Provisions for Tree Preservation

There are a number of legislative provisions which affect trees within the City of Fairfield. These are documented below:

- a) The Fairfield Local Environmental Plan 1994 enables Council to make a Tree Preservation Order. This is enlarged upon at 3.2 under.
- b) Under Clause 34 of the Roads (General) Transitional Regulation 1993, Council can order the owner of a property to remove or prune any tree, hedge or plant where it overhangs or overshadows a road or footpath creating an obstruction for pedestrians or vehicles.
- c) The new Local Government Act, July 1993, Chapter 13 Part 4 - Annual Report S.428 states:
“a report as to the state of the environment in the area, including a report as to:
i) any unique landscape and vegetation, and
ii) vegetation cover and any instruments or policies relating to it, including any instrument relating to Tree Preservation.”

Other legislative provisions which may affect trees include:

- a) The Environmental Planning and Assessment Act - 1979, which requires, under Part V, that a review of environmental factors be carried out before removing any tree.
- b) The Heritage Act 1977 (Section 130) and several other relevant Acts with minimal relevance e.g. Soil Conservation Act – 1930

Along with the above legislative provisions, a number of the public authorities have requirements which have an impact on existing trees and on the planting of new trees (see following).

2 The Fairfield Tree Preservation Order

Clause 10 of the Fairfield Local Environmental Plan 1994 allows Council to make a Tree Preservation Order. This order contains the controls on cutting down, lopping and damaging trees in the City of Fairfield. The statutory form of the Order is shown below in a more explanatory form.

Fairfield City Tree Preservation Order

- a) *Name of Order* - This Order is called “Fairfield Tree Preservation Order”.
- b) *Land to which Order applies* – This Order applies to all land in the City of Fairfield.
- c) *Amendments* – This Order may be revised from time to time. Please check with staff for the date of last amendment.
- d) *Definitions* - Some of the terms used in this document have a special meaning .are found in the Environmental Planning and Assessment Act 1979 or Fairfield LEP 1 994 unless specifically defined in this Order.

“Tree” means a perennial plant with a self supporting stem which:

- has a height of more than 4 metres; or
- has a spread of more then 3 metres; or

- has a trunk diameter of more than 75mm measured 1 metre above ground level and is also of a species which has a mature height of more than 4m; or
 - is listed in Council's Significant Tree Register (see Appendix K for an abbreviated Significant Tree List); but
 - excludes any tree declared under the Noxious Weeds Act (NSW) 1993 (see Section 3.2.3 following).
- e) *Objective of the Order* - The objective of this Order is to protect, conserve and improve the environment of the City of Fairfield by ensuring that no trees are wilfully injured, removed or destroyed without the approval of Council.
- f) *Approval* - Council's approval is required before any of the following work is done to any tree:
- ringbarking;
 - cutting down;
 - topping;
 - lopping;
 - root pruning;
 - removing;
 - wilfully injuring; or
 - destroying
- g) *Prosecution* - Any person acting contrary to this Order will be liable to prosecution unless it can be demonstrated to the satisfaction of the Council that the tree was dying or dead or had become dangerous. In the event of prosecution, it will not be a sufficient defence that the species was not appropriately identified by a qualified person.

2.2 Assessment Criteria

In assessing an application under this Order, the following criteria will be taken into account.

- a) *Health of a Tree* - The present health of a tree is assessed for any visible signs of decay or deterioration usually indicated by a lack of foliage, dead branches, fungal bodies, excessive sap being exuded from the trunk and evidence of insect attack or has significant holes, unusual change in canopy, physical damage, including splits, inclusions, cracks or splits.
- b) *Tree Environs* – Whether or not there have been changes to soil levels around the tree, excessive root damage caused during construction works, variance in water availability, through damage to the water table, competition from other vegetation (particularly climbing vines) and compaction of soil, including areas used to park cars or other surface changes that have adversely impacted upon the tree and has or will cause the tree to become unhealthy.
- c) *Adverse Effects* – The likelihood of the tree having adverse impact on its surroundings with particular emphasis on risk or life and property damage. Trees having intrusive root systems which cause damage to foundations of houses or blockages to domestic sewer and Stormwater lines where replacement of the pipe will not resolve the situation will be approved for removal. Where the tree has a dense canopy preventing wind from naturally passing through or has extraordinarily long limbs which are in danger of snapping off or there may be a fork in the tree which presents as a potential failure point, approval shall be granted for the tree to be pruned or removed as appropriate.

- d) *Significance of Tree scape* - The inspector will assess the visual environment and the significance of the specimen within the trees scape, whether the tree is an endangered or rare species or of historical significance and whether the tree provides a link between bushland and reserves.

2.3 Exemptions to the Tree Preservation Order

The following trees will be exempt from Council's Tree Preservation Order and Council permission is not required for the removal of trees contained within this list.

- All trees declared noxious under the Noxious Weeds Act (NSW) 1993
Category W2 - Rhus Tree *Toxicodendron succedanum*

However, it should be noted that in a breach of the Order it will not be sufficient defence that the species was not appropriately identified by a qualified person prior to the removal of the tree.

3 Operation of the Tree Preservation Order

3.1 Implementation of the Order

While there is a requirement to write the actual Tree Preservation Order in the form of a legal document, it will be presented to the public in a more user friendly and easy to read fashion than the present form.

With the City of Fairfield being recognised as the most culturally diverse local government area in Australia, particular emphasis must be made to communicate the requirements of Council under the Tree Preservation Order to the wider community in a language and style that will be understood and adhered to.

In the past a copy of the Order was translated into a number of community languages. It is proposed that the new Tree Preservation Order outlined above will be dealt with in the same way (See Appendix B).

Any proposed prosecutions will be referred to the relevant Council Committee prior to prosecution.

3.2 Tree Preservation Order Fees

Following a report to Council in October 1 993 a \$10 inspection fee is now levied on residents who apply for a Tree Preservation Order. It was further resolved by Council in May 1994 that pensioners would be exempt from the \$10 inspection fee. To offset the imposition of the \$10 fee, a tear off section at the bottom of the form, following an inspection, can be redeemed at Council's nursery for a tree by the applicant irrespective of the outcome of the Tree Preservation Order inspection.

The fee was introduced in an attempt to encourage residents to think seriously about the issue of tree preservation, and to perhaps reconsider hasty decisions to remove trees. The money collected funds the taking and development of photographs of all trees inspected. These photographs give Council a reference should any unauthorised works be carried out on a tree leading to a prosecution under the Tree Preservation Order.

3.3 Tree Preservation Order Inspections

- a) *Applications for Inspections* - Applicants for a Tree Preservation Order can either come in person to the Administration Centre, phone or write to Council asking for permission to carry out work on their tree. A person coming to the Administration Centre, simply fills out a Tree Preservation Order application form, pays the inspection fee to the cashier and then makes an appointment for the inspection.

When making a Tree Preservation Order application by phone or mail, a form and accompanying flyer outlining the main points to consider is mailed to the applicant (see Appendix C) who then fills it out and encloses a cheque or money order for the application fee. Upon receipt of the completed form and accompanying payment, the resident is contacted by Council and a mutually agreeable time for the inspection is arranged.

- b) *Inspections* - Inspections are carried out by staff who have the necessary horticultural qualifications. The inspections are by appointment and if possible the applicant should be present to provide any additional information that may be required by the inspector. In this way, accurate decisions, taking into account all facts, can be made at the time of the inspection. The trees to be inspected should be clearly identified if it is anticipated that the applicant or their representative will not be on-site at the time of the inspection. Trees should be marked with a ribbon or something that will be clearly noticed.

If the applicant or their representative are not going to be on-site at the time of the inspection, written permission should also be left in the letterbox giving permission for the Tree Preservation Order inspector to enter the property.

- c) *Criteria For Assessment* – A number of criteria which are taken into consideration when assessing an application for works to be undertaken have been identified:

- Health Of The Tree
- Tree Environs
- Adverse Effects
- Significance Of Tree Scape

- d) *Possible Liability to Council* - The refusal of an application to remove a tree may place a liability upon Council should negligence be proven in the accurate assessment of the tree and its likely effect upon its environment.

The potential for the tree to cause damage in the future is also considered in an assessment for removal.

As a result of potential liability to Council following inaccurate assessment, Council ensures that only appropriately Qualified officers of Council undertake the inspection and assessment of trees, and a photographic record is kept and filed with a copy of each application.

- e) *Statutory Authorities* - In instances where the provision of public utilities may necessitate work upon a tree, the application will be considered in light of the criteria as outlined in this guideline. All authorities are to give Council prior notice of their intent to carry out work on trees within Council's area.

Exceptions exist where statutory legislation supersedes Council provision e.g. The Tree Preservation Order.

Should it be shown that poor arboricultural practices cause the subsequent demise or substantial loss of amenity of the tree, then that authority is liable for its removal and replacement at no cost to Council.

3.4 Process of Refusal of an Application

When an application to Council is refused, the following avenue of appeal will be available to the applicant.

- Step One - Reinspection of the tree is undertaken by Council's Tree Preservation Officer and the applicant is advised of the criteria under which the tree has been inspected and permission for removal or pruning denied. At this point the applicant may raise any additional information not considered in the initial application. An additional inspection fee must be paid if the reinspection is not requested within 3 months of the date of the original refusal.
- Step Two - Should the applicant remain dissatisfied with the further assessment, the applicant is advised to obtain an independent assessment from a suitably qualified arboriculturalist and submit this assessment to Council for further consideration by the Parks & Gardens Division.
- Step Three - A report is then prepared by the Landscape Co-ordinator or Manager - Parks & Gardens for the relevant Council Committee which assesses the application with regard to the criteria under which inspections are undertaken, including the implementation of this policy, and any evidence is forwarded by the applicant. Before a report is prepared for decision by Council, all avenues of conciliation will be considered.
- Step Four - The applicant is then notified of the decision by Council.

3.5 Neighbour Disputes over Trees

One of the most contentious issues that the Parks & Gardens Division have to deal with is the matter of neighbour disputes over trees. There is a perceived public expectation that Council Officers can come onto a property and demand that the owner of a tree carry out work on that tree, be it removal or pruning of overhanging branches on behalf of their neighbour.

This is simply not the case. Council has no power to order the owner of a tree to remove that tree apart from under the provisions of the Noxious Weeds Act 1993. At the present time this only covers one species of tree in the Fairfield City Area - Rhus Tree.

Permission for removal or pruning of a tree can only be granted to the owner of the tree, and only the owner of the tree can apply for a T.P.O. permit.

It is not the task of Council to mediate neighbour disputes over trees, however, when Council receives a request, the Parks & Gardens Division does provide advice regarding where the person may go to resolve the dispute. The Community Justice Centre specialises in these types of situations.

If this fails, then the person is directed to see the Chamber Magistrate who may act on their behalf.

A brochure outlining steps to be taken when a dispute arises between neighbours will be distributed to people seeking information regarding their position when dealing with a neighbour's tree (Refer to Council's Tree Management Policy)

4 Conditions of Development Consent

Under the terms of the Tree Preservation Order, Council requires an application for consent for the removal or other arboricultural works (e.g. pruning, root pruning or transplanting), proposed to be undertaken on trees. Upon receipt of an application to undertake works upon a tree, a Council Officer inspects the tree and determines a recommendation based on the criteria identified in Section 2.6. The result of the inspection is conveyed to the applicant under Council notice.

The retention of mature and semi-mature trees in new development provides a range of benefits such as climatic modification, spatial definition, wildlife habitat and local character which cannot be obtained through new planting. The marketability and attractiveness of a development is reinforced through the retention and protection of these trees, at little cost to the developer. This is especially so in an area such as the City of Fairfield where over the past 100 years virtually all of the tree cover has been lost in the development of the urban area.

To avoid indiscriminate clearing and to ensure the long term viability of this asset, the following measures need to be taken into consideration when undertaking development for any purpose:

Identify trees to be retained and protected prior to development. This is to be done by drawing up a plan showing the position of trees on the site, their species, age and condition. This work is to be undertaken by a qualified arborist or horticulturalist;

- **Identify trees to be retained and protected to development. This is to be done by drawing up a plan showing the position of trees on the site, their species, age and condition. This work is to be undertaken by a qualified arborist or horticulturalist;**
- **Isolate the root zone to the drip line (canopy line) of individual or groups of trees through the erection of a clearly marked fence, (minimum 1 .5m high) prior to land clearing or construction work;**
- **No dumping of materials, parking of vehicles, excavation, or filling is to be permitted within the fenced root zone.**
- **Minimise soil disturbance in the surrounding area (to twice the canopy width), and;**
- **Where trenches for services cannot be laid outside the fenced zone, roots greater than 75mm wide diameter are to be clean cut and treated with a fungicide in accordance with acceptable arboricultural practices. All cut roots will be treated with an approved hormone compound and sealed with bitumen.**

In all Council procedures requiring development consent, that development will contain conditions of approval in accordance with the clauses identified above and incorporate special conditions as follows:

a) Types of Development

i) Subdivisions - Prior to the consideration of an application to subdivide, a detailed survey plan of the subdivision is to be submitted to Council for approval. The plan is to indicate the position of all trees as defined by the Tree Preservation Order, the position of each tree in relation to proposed roads, building platforms and the installation of other related services. The plan is to indicate whether the tree is to be removed or retained.

ii) Other Types Of Development

In the case of the following types of development:

- Commercial/Industrial
- Medium Density Development
- Residential Development
- Rural Development

the following conditions will apply:

- All existing trees as defined by the Tree Preservation Order are to be detailed on landscape plans submitted to Council for approval prior to any work commencing. The plans are to indicate the position of each tree in relation to the proposed development and the installation of other related services and whether the tree is to be removed or retained.
- Where no tree on site is considered by Council to be notable, approval of an application to remove a tree within three metres of a proposed building will be permitted. This will only be considered after all other avenues have been considered.

b) Trees Adjacent to Buildings

Permission for the removal of trees within three metres of an existing dwelling may be granted on the proviso that a suitable replacement tree will be planted.

However, requests for removal of those trees which are considered to be rare or endangered species, would require special scrutiny.

(c) Assessment of Bonds

Where trees are to be retained in conjunction with development and concern is held for their long term survival, Council will require a security deposit to ensure that appropriate protection is provided to the trees during construction. This shall be in the form of a cash bond or acceptable bank guarantee against the retention and protection of trees noted as significant to the development.

The bond will be determined by Council for the identified tree or trees during the period of development in accordance with the formulae as set out below.

Should activities during construction jeopardise the expected recovery of the trees as judged by Council then the bond shall be held for a period not in excess of five years.

- a) Cost of replacement tree in a 200 litre container
\$ _____
- b) Cost of planting including all disbursements, transport, labour and materials
\$ _____
- c) Cost of tree removal from site
\$ _____
- d) Cost of maintenance per annum for life of containerised replacement to reach maturity of the tree removed based on \$300 p.a. for a maximum of 5 years $\text{YRS}_x\$300=$
\$ _____
- e) Council administrative fee
\$ _____

Assessment of Bond

TOTAL \$ _____

If, during the process of construction the tree in Question is injured and subsequently dies, then it is to be replaced by the developer with a tree of like species, as near in size as practical, to a semi-mature specimen.

It is noted that some species perform better when planted at a smaller size and this will be considered by Council in its requirement for replacement.